

1 THE HONORABLE THOMAS S. ZILLY
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8 UNITED STATES DISTRICT COURT
9 FOR THE WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 ALEX ZIMERMAN

12 Plaintiff,

13 No. C11-138Z

14 VS.

15 ORDER

16 MARY McBRIDE,

17 Defendant.

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THIS MATTER comes before the Court on defendant Mary McBride's second motion to dismiss, docket no. 15. On March 8, 2011, the Court granted defendant's first motion, and dismissed plaintiff Alex Zimerman's complaint pursuant to Fed. R. Civ. P. 12(b)(6). Order, docket no. 11. Specifically, plaintiff's complaint was legally insufficient to state a claim for relief because it only alleged, in conclusory fashion, that defendant was liable for "bad service, abuse, [and] mismanagement." Compl., docket no. 1-2; Order, docket no. 11. However, the Court also granted plaintiff leave to amend his complaint and directed him to provide a short plain statement of his

1 claim showing that he is entitled to relief. Order, docket no. 11; see also Fed. R. Civ.
 2 P. 8(a).

3 On April 7, 2011, plaintiff filed his amended complaint. Am. Compl., docket
 4 no. 13. Plaintiff's amended complaint is fraught with the same deficiencies as his first;
 5 it provides only conclusory allegations of fraud, waste, abuse, and corruption by
 6 defendant and the King County Housing Authority. Id. at 1-2. Plaintiff's amended
 7 complaint does not state a plausible claim for relief and must be dismissed. See
 8 Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) ("To survive a motion to dismiss, a
 9 complaint must contain sufficient factual matter, accepted as true, to state a claim for
 10 relief that is plausible on its face.").¹

13 Although the Court previously granted plaintiff leave to file an amended
 14 complaint, plaintiff has again failed to plead facts that demonstrate he is entitled to
 15 relief. To the contrary, plaintiff's amended complaint, which requests a refund of
 16 \$1,000.00 of plaintiff's taxes for defendant's alleged fraud and corruption, clearly
 17 demonstrates that the deficiencies in the complaint cannot be cured by amendment.
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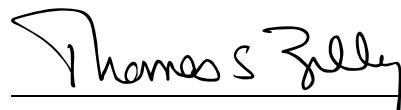
20 ¹ Defendant also argues that under the Federal Tort Claims Act ("FTCA"), plaintiff's
 21 claims are barred by his failure to file an administrative claim with the government
 22 before bringing this lawsuit. However, the FTCA applies only to claims against the
 23 United States. See 28 U.S.C. § 2679. As the Court indicated in its prior Order,
 24 although the United States may be substituted in place of a government employee,
 25 substitution is only proper where the attorney general has certified that the employee
 26 was acting within the scope of his or her employment at the time the claim arose.
 Order, docket no. 11 (citing 28 U.S.C. § 2679(d)(1)). Despite the Court's explanation
 of this procedure in its prior Order, defendant has again failed to submit the requisite
 certification. Accordingly, the Court again DECLINES to address defendant's
 alternative argument that plaintiff's case is barred by the FTCA.

1 See Weilburg v. Shapiro, 488 F.3d 1202, 1205 (9th Cir. 2007). Moreover, plaintiff has
2 failed to file any opposition to defendant's motion to dismiss, which the Court
3 construes as an admission that the motion has merit. See Local Rule CR 7(b)(2).
4 Accordingly, the Court GRANTS defendant's motion, docket no. 15, and DISMISSES
5 plaintiff's complaint with prejudice.
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7 The Court further STRIKES defendant's second motion to stay discovery,
8 docket no. 16, as moot.
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10 IT IS SO ORDERED.
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12 DATED this 26th day of May, 2011.
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14 Thomas S. Zilly
15 United States District Judge
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